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OSAH

AUG 14 2014

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

JEFFREY BARKSDALE,  
Petitioner,

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*K. Westray*  
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Kevin Westray, Legal Assistant

Docket No.:  
OSAH-SPB-SWP-1459125-106-Teate

v.

VIEW POINT HEALTH,  
Respondent.

**INITIAL DECISION**

**I. Introduction**

Petitioner, Jeffery Barksdale, appeals View Point Health's (VPH's) decision to suspend him without pay pending resolution of a criminal charge of simple assault. The hearing on this matter was conducted via telephone conference on July 28, 2014. Petitioner represented himself at the hearing. Mr. Aaron Salzman, Esq. and Charles J. Cole, Esq., represented VPH. For the reasons stated below, VPH's decision to suspend Petitioner without pay is **REVERSED**.

**II. Findings of Fact**

1. Petitioner is a classified employee. He is employed as a Behavioral Health Clinician by VPH, a Community Services Board contracted with the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD) to provide behavioral health and developmental disability services to clients that are uninsured or underinsured. Petitioner's position was housed at the Gwinnett County Juvenile Court and his duties included referring juveniles with behavioral health issues to services provided by VPH. (Testimony of Derek Singleton).

2. On June 8, 2014, the Magistrate Court of Gwinnett County issued a warrant for Petitioner's arrest. Petitioner was subsequently arrested and charged with committing the offense of "Simple Assault by Placing Another in Fear" in violation of O.C.G.A. § 16-5-20. The simple assault charge was predicated on allegations that Petitioner made comments of a threatening nature to another person. (Respondent's Exhibit A; *See* O.C.G.A. § 16-5-20 (2014)).

3. Pursuant to VPH policy, Petitioner reported his arrest and the criminal charge to his supervisor, Cordelia Cowan. On June 11, 2014, Chad Jones, Director of Youth Services at VPH, and Derrick Singleton, VPH's Chief Financial Officer, met with Petitioner at VPH to discuss the arrest and simple assault charge. At the conclusion of the meeting, Petitioner was informed that he would be placed on paid suspension until further notice. (Testimony of Derek Singleton; Testimony of Jeffrey Barksdale; Respondent's Exhibit B; Petitioner's Request for Hearing dated June 25, 2014).

4. In a letter dated June 12, 2014, Jennifer Hibbard, Chief Executive Officer of VPH, notified

Petitioner that he would remain on paid suspension until June 29, at which point he would be suspended without pay pending resolution of the misdemeanor criminal charge of simple assault. No other basis for the suspension was stated. Petitioner was further notified that he had the right to respond to VPH's determination within ten days of receipt of the letter. (Suspension of Pay and Notice of Suspension Without Pay letter dated June 12, 2014).

5. Petitioner immediately responded to Ms. Hibbard's June 12 letter, whereupon VPH scheduled a second meeting between Petitioner, Ms. Hibbard, Mr. Singleton, and Jamika Solomon, Human Resources Director at VPH. Petitioner was informed during this meeting that VPH would adhere to its original determination and advised of his right to appeal to the State Personnel Board (SPB). After VPH sent Petitioner a Notice of Final Determination regarding his suspension without pay, Petitioner requested a hearing and the matter was referred to the Office of State Administrative Hearings for adjudication pursuant to O.C.G.A. § 40-5-9 and SPB Rule 27. (Determination of Final Action letter dated June 20, 2014; Petitioner's Request for Hearing dated June 25, 2014; Ga. Comp. R. & Regs. 478-1-.27).

6. VPH cited its background check policy to support its determination to place Petitioner on unpaid suspension. VPH's background check policy provides in part that it may

disqualify applicants, contractors, interns or volunteers for positions based on other convictions or a pattern of convictions. A recent arrest where the case is unresolved and where the conviction would prohibit employment will result in disqualification until such time as the charges are dismissed or a not guilty decision is received.

This provision appears in a section of VPH's policy that intermittently refers to "employees" and "applicants," making it unclear as to whether the "disqualification" provision is applicable to Petitioner. VPH's background check policy does not expressly refer to suspension without pay for an arrest or simple assault charge. (Testimony of Derek Singleton; Respondent's Exhibit B).

7. VPH also cited DBHDD's Criminal History Records Check policy, the relevant portion of which provides that "[a]n applicant awaiting final disposition on charges for any offense," including simple assault, "may not provide services for DBHDD until such charges have been resolved" in support of its decision to suspend Petitioner without pay pending resolution of the criminal charge. (Testimony of Jeffrey Barksdale; Respondent's Exhibit C).

8. At the hearing on this matter, VPH again cited the above-described policy manuals and further argued that the decision to suspend Petitioner without pay was in accordance with SPB Rules, which allow for suspension of a classified employee without pay "for pending criminal court action when such pending criminal court action may deter the employee's effectiveness in employment." Although Mr. Singleton opined that Petitioner's position at VPH involved regularly interacting with youths and that his simple assault charge would deter Petitioner's effectiveness in employment as a youth counselor, no objective evidence or other testimony supports such an opinion that is refuted by Petitioner. (Testimony of Derek Singleton).

9. Petitioner contended at the hearing on this matter that his suspension was not authorized by

the VPH or DBHDD policy manual provisions cited by VPH. Petitioner argued that those provisions did not support his unpaid suspension inasmuch as they referred to applicants. Petitioner further argued that the policy manuals authorized adverse actions against employees only where the employee was convicted of the criminal charge. Petitioner further argued that this matter is a misdemeanor rather than a felony and that his effectiveness as an employee was not affected. He suggested that if VPH was concerned with any potential detriment to the clients that he could be allowed to work remotely pending the simple assault charge being expunged. (Testimony of Jeffrey Barksdale).

10. Petitioner is currently complying with the directive from the court in his misdemeanor criminal action that he complete a pre-adjudication diversion program comprised of a domestic violence class and a community service requirement. The charge arose as a result of a domestic dispute with a spouse or former spouse. According to Petitioner, once he completes the court-ordered diversion program, the charge of simple assault will be dismissed and his record expunged. (Testimony of Jeffrey Barksdale).

### **III. Conclusions of Law**

1. Under Georgia law, “[c]lassified employees . . . may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board governing adverse actions and appeals for classified employees.” O.C.G.A. § 45-20-8(a) (2014). The procedure for adverse action against a classified employee’s employment must include, at a minimum, providing the classified employee with reasons for the adverse action and “an opportunity to file an appeal and request a hearing which may be held before either the [State Personnel Board] or an administrative law judge.” O.C.G.A. § 45-20-8(b) (2014).

2. Suspension without pay is a type of adverse action authorized “for disciplinary purposes or for pending criminal court action when such pending criminal court action may deter the employee's effectiveness in employment.” Ga. Comp. R. & Regs. 478-1-24 (7)(b)(1) (2009).<sup>1</sup> More specifically, the appointing authority may suspend an employee for disciplinary purposes because of: (1) negligence or inefficiency in performing assigned duties; (2) inability or unfitness to perform assigned duties; (3) insubordination; (4) misconduct; (5) conduct reflecting discredit on the department; (6) commission of a felony or other crime involving moral turpitude; (7) chronic tardiness or absenteeism; (8) failure to report for or remain at work without justifiable cause; (9) failure to process performance appraisals in a timely manner; or (10) political activity in violation of 478-1-.08. Ga. Comp. R. & Regs. 478-1-24 (7)(b)(1)(i). In its adverse action letter, VPH relies only on Petitioner’s pending misdemeanor criminal action. At the hearing, VPH argues that such a pending charge may deter the employee’s effectiveness in employment. However, with regard to a misdemeanor charge such as simple assault that is not a crime involving moral turpitude, VPH’s employment policy contradicts State Personnel Board policy that provides that the pending charge must be a felony or other crime involving moral turpitude.

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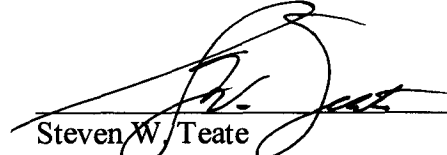
<sup>1</sup> This adverse action preceded June 20, 2014, the effective date of Ga. Comp. R. & Regs. 478-1-26 (3) and (4) (2014) that replaced provisions related to suspension without pay formerly contained in Ga. Comp. R. & Regs. 478-1-24 (7) (2009).

3. In an adverse action against a classified employee, VPH has the initial burden of proof and going forward. Ga. Comp. R. & Regs. 616-1-2-.07 (1). VPH has failed to meet its burden to establish that Petitioner's pending misdemeanor assault is crime involving moral turpitude as contemplated in Ga. Comp. R. & Regs. 478-1-24 (7)(b)(1)(i) or that it would deter Petitioner's effectiveness in employment even if it did meet the State Personnel Board criteria.

#### IV. Decision

VHS's decision to suspend Petitioner without pay per notice issued on June 20, 2014 is **REVERSED**. Accordingly, VHS is directed to reinstate Petitioner with back pay less compensation received from other sources as directed in Ga. Comp. R. & Regs. 478-1-24(9)(f)(4) (2008).

**SO ORDERED**, this 13<sup>th</sup> day of August 2014.



Steven W. Teate  
Administrative Law Judge